

Kim's Marina and Resort

Canyon Ferry Reservoir

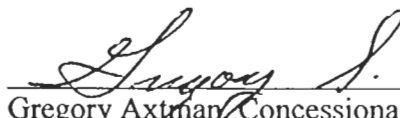

Agreement No. 4-LM-60-L2416

Bureau of Reclamation, Montana Area Office
Kim's Marina Concession Area
Concession Agreement No. 4-LM-60-L2416
Canyon Ferry Reservoir

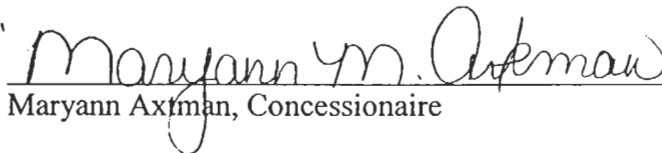
Modification No. 4

Article 2, Term is hereby amended by extending the term of the Agreement to December 31, 2005.

The Concessionaire and Reclamation mutually agree to the above identified modification to Concession Agreement No. 4-LM-60-L2416.

  7-21-03

Gregory Axtman, Concessionaire Date

 7-21-03

Maryann Axtman, Concessionaire Date

 7-28-03

Susan J. Kelly, Area Manager Date

MTA
JUL 21 2000

Lease of United States Property
For the Operation and Maintenance
of
Kim's Marina, Canyon Ferry Reservoir
Bureau of Reclamation Lease No. 4-LM-60-L2416

Modification No. 3

Article 3. Concession Fee, is hereby amended by inserting "less fees collected for the sale of hunting and fishing licenses", in the first sentence of the first paragraph, after "...any other transaction" and before "provided for by this Permit...".

The Concessionaire and Reclamation mutually agree to the above identified modifications to Lease No. 4-LM-60-L2416.

Gregory S. Axtman - 6-20-00
Mr. Gregory S. Axtman, Concessionaire Date

Maryann M. Axtman 6-20-2000
Ms. Maryann M. Axtman, Concessionaire Date

Susan Kelly 7-14-00
Ms. Susan Kelly, Area Manager Date

orig is in concession Agreement file

Bureau of Reclamation, Montana Area Office
Kim's Marina Concession Area
Contract No. 4-LM-60-L2416
Canyon Ferry Reservoir

* * * * *

Modification No. 2

March 17, 1998

The above cited Contract is hereby amended as follows:

1. Article 1, Description of Premises, is hereby amended to read, in entirety:

"Reclamation grants to the Concessioner and the Concessioner accepts from Reclamation permission to use and occupy the following described tract of land for the purposes herein described and for no other purposes:

A tract of land located in Section 2 and 3, Township 10 North, Range 1 West, P.M.M., Lewis & Clark County, Montana, more particularly described as;

Combined Tracts 1 and 2. Beginning at the 1/4 corner of Section 2 and Section 3 (SW corner, NW 1/4, Section 2), T10N, R1W. Thence S0°51'W for a distance of 1054.7 feet to a point; thence S88°54'W for a distance of 300.3 feet to a point; thence S0°51'W for a distance of 400 feet, more or less, to the north shore of Canyon Ferry Lake; thence along the north and east shore of Canyon Ferry Lake and along Cave Bay so-called to a point; thence N89°37'E for a distance of 300 feet, more or less, to a point; thence N0°47'E for a distance of 1250 feet, more or less, to a point; thence N74°44'W along the southerly right-of-way of the Canyon Ferry Road, so-called, for a distance of 330 feet, more or less, to a point; thence S89°32'W for a distance of 110 feet, more or less to a point; thence S18°06'W for a distance of 45.91 feet to a point; thence N71°57'W for a distance of 137.04 feet to a point; thence S89°32'W for a distance of 95 feet, more or less, to a point; thence N0°42'E for a distance of 114.25 feet to a point; thence N74°44'W along the southerly right-of-way of Canyon Ferry Road, so-called, for a distance of 686.37 feet to a point; thence S0°41'W for a distance of 300.44 feet to the point of beginning.

The above described property is shown on the attached map entitled Kim's Marina Concession Area, marked as Exhibit A, attached hereto and incorporated in and made a part of this contract. The Concessioner's activities will be restricted to those areas herein described and marked on Exhibit A.

(The description above, and the boundary shown on Exhibit A, are substantially the same description of the concession area originally included in the 1993 concession contract for Kim's Marina, except that it corrects typographical errors and omissions in the original description. Reclamation and the Concessioners agree that this description is not a "legal description", until such time as Reclamation conducts a legal survey of the concession area boundary. Concessioner will use Exhibit A as a general guide to the location of the concession area boundary, and will consult with Reclamation prior to engaging in any activities that occur near the boundary.)"

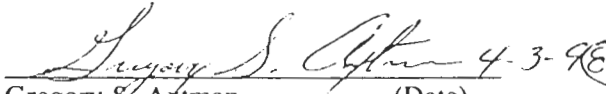

2. Article 16, Boat Docks, is hereby amended to read, in entirety:

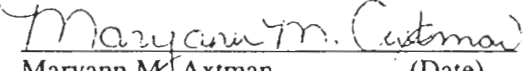
"All docks shall be maintained in a usable condition in a manner acceptable to Reclamation, according to the standards and guidelines contained in Exhibit C, Boat Dock Standards For Kim's Marina Concession Area, attached hereto and incorporated in and made a part of this contract."

3. A new Article (Article 43) is hereby created, to read:

"In executing the responsibilities of the United States under this contract, Reclamation is relying on the fulfillment of the terms and provisions of the "Agreement to Sell and Purchase" the business known as Kim's Marina, including Addenda and Exhibits, between Bruce & Gayle Perry, and Greg & Maryanne Axtman, dated 9/12/97

We agree to the above modifications of this Contract.

 Gregory S. Axtman Concessioner	 Area Manager Bureau of Reclamation Billings, Montana
(Date) 4-3-98	(Date) 4-24-98


Maryann M. Axtman
Concessioner

(Date) 4/3/98

EXHIBIT C.

BOAT DOCK STANDARDS FOR KIM'S MARINA CONCESSION AREA

Introduction. The standards used here are adopted from the U.S. Army Corps of Engineers (Corps) Minimum Design Standards For Moorage Facilities, the Corps' Marina Safety Standards For Commercial Concessions and Gasoline Docks, and from recommendations from the National Park Service, and commercial dock manufacturers. All new or replacement boat docks approved by Reclamation for the Kim's Marina Concession Area shall meet or exceed the minimum design standards listed below. All replacement flotation used for the existing docks must meet the requirements of Section 3(d) of these standards. All existing boat docks at Kim's Marina must meet these standards by June 1, 2003. All docks that do not meet these standards by June 1, 2003, shall be condemned by Reclamation, and the Concessioner shall be responsible for removing them from Reclamation property and properly disposing of them at no expense to Reclamation. If condemned docks are not removed, Reclamation shall remove and dispose of them and the Concessioner will be responsible for all costs of the removal and disposal.

1. Boat Docks (Moorage and Service Docks):

- a. Wood Frame Construction:
 - (1) All wood in the structure including the deck must be treated with a preservative. The preservative used will not be toxic to fish and wildlife if leached from the wood. CCA treatment is acceptable.
 - (2) Floor joists and flotation frames shall not be less than 2"X 6" s4s dimension material and spaced in such a manner to allow for expansion. No part of the wood frame shall rest in the water under minimum live load conditions.
 - (3) Prior to construction or installation, the concessioner shall submit to Reclamation for approval, complete design and specification details for all new or replacement wood frame docks.
- b. Other Construction Requirements:
 - (1) Docks using other than wood frame construction (aluminum, steel, plastic, concrete, etc.) must be commercially engineered and manufactured, and are subject to prior approval of Reclamation.
 - (2) Horizontal joints on the walking surface (decking) may not exceed ½" in width (for instance, cross-plank spacing), and vertical joints on the walking surface may not exceed ¼" in height (thresholds, the joint where two dock sections meet, etc.) unless they are sloped back to 1:12 (8.3%). In constructing new wood decking, care should be taken to insure that shrinkage will not form gaps in the decking that exceed ½" in width.
 - (3) Finger docks (walkways between boat slips) shall be a minimum 36" wide (48" is recommended). Main docks serving the public (basically all other public docks, service docks, walkways, gas docks, etc.) shall be a minimum of 48" wide (60" wide is recommended).
 - (4) Decking shall be firm and slip-resistant. If exposed wood decking is used as a surfacing material, planks should run perpendicular to the direction of travel.
- c. In construction, all connections will be secured with sheet metal, steel plates, metal straps, or plywood gussets to resist wave action.
- d. Storage compartments and other mounted or built-in marina equipment are permissible on docks, providing walkways at least 48" wide are provided around any and all equipment stored or mounted on the dock.
- e. All electrical service on docks must be installed, operated and maintained in accordance with the requirements of the National Electrical Code (NEC), the National Electrical Safety Code, and applicable State and local codes. Concessioners must obtain a certificate from a licensed/certified and practicing electrician stating that all electrical wiring is in compliance with the NEC and local codes.
- f. Reclamation reserves the right to allow fuel dispensing from service docks. The concessioner is responsible for developing and submitting detailed plans for Reclamation's review and approval of a dock-based fuel dispensing system. The concessioner will be required to strictly comply with all

applicable Federal, State and local codes or guidelines regarding fuel dispensing, storage and safe handling.

- g. Storage of fuel or any other flammable liquids on docks is not permitted.
- h. Docks shall be designed for a minimum structural load of 50 lbs. per square foot.
- i. Variance from any of the standards set forth in this Exhibit may be granted by Reclamation only after a review of detailed plans submitted by the concessioner, subject to the approval of the Corps, and subject to a final inspection of the finished structure.

2. Walkways (Connecting Finger Piers And Accessing Other Docks And The Shore):

- a. Walkways will be at least 48" in width (60" minimum is recommended).
- b. Walkways connecting main piers to the shore, including ramps, gangways, and stairs, shall be constructed with handrails at each side of the walkway. Handrails shall be approximately 42" in height, with an intermediate rail approximately 22" in height below the handrail. Posts for handrails should be spaced no farther than 8 feet apart. Handrails must have a smooth surface and be able to withstand a load of at least 200 pounds applied in any direction at any point with a minimum of deflection.
- c. Walkways shall be structurally sound. If lumber is used, it will have a minimum size of two inches by six inches or be of equivalent strength. The lumber shall be free of knots, splits, decay, and protruding nails, or conditions which would decrease the strength and impair the safety of the walkway.
- d. Walkways from shore to dock shall be free from excessive spring, deflection, or lateral movement and adequately supported with flotation where necessary. Walkways shall be accessible from the shore along a clearly marked path. Walkways from shore to dock shall be adjusted with changing water levels so as to minimize the slope of the walkway, but shall not be allowed to exceed a 1:3 running slope (1 foot drop in 3 foot run, or 33%).

3. Flotation:

- a. Freeboard. Flotation shall be adequate to support the top of the decking no less than 12" and no more than 20" above the water level under dead load conditions (the entire weight of the floating units and all permanently mounted equipment), and no less than 8" above the water level under minimum live load conditions. Flotation shall be designed for a minimum dead load of 19 lbs. per square foot (p.s.f.), and a minimum live load of 30 lbs. p.s.f.
- b. Flotation shall consist of commercially manufactured polyethylene flotation structures (billets) injected with polystyrene or urethane foam. Reclamation may consider allowing other commercially manufactured flotation structures if the alternate flotation will not:
 - (1) sink or become water-logged if punctured,
 - (2) be subject to damage by animals,
 - (3) deteriorate on contact with petroleum products
 - (4) contaminate the water when punctured.
- c. Docks must be maintained in such a manner that they are easily visible above the surface of the water. Some portion of the structure must be at least 18 inches out of the water (i.e., handrails, surface of the dock, storage cabinets. etc.)
- d. All new or replacement flotation shall comply with Section 3(b), above.

4. Anchorage:

- a. An anchorage system shall be provided which will insure secure mooring of the structure. The anchorage shall provide safety against extreme water fluctuations, currents, drift impact, and wave action.
- b. The use of vegetation or the placement of permanent structures on the shoreline as an anchorage system is not allowed.

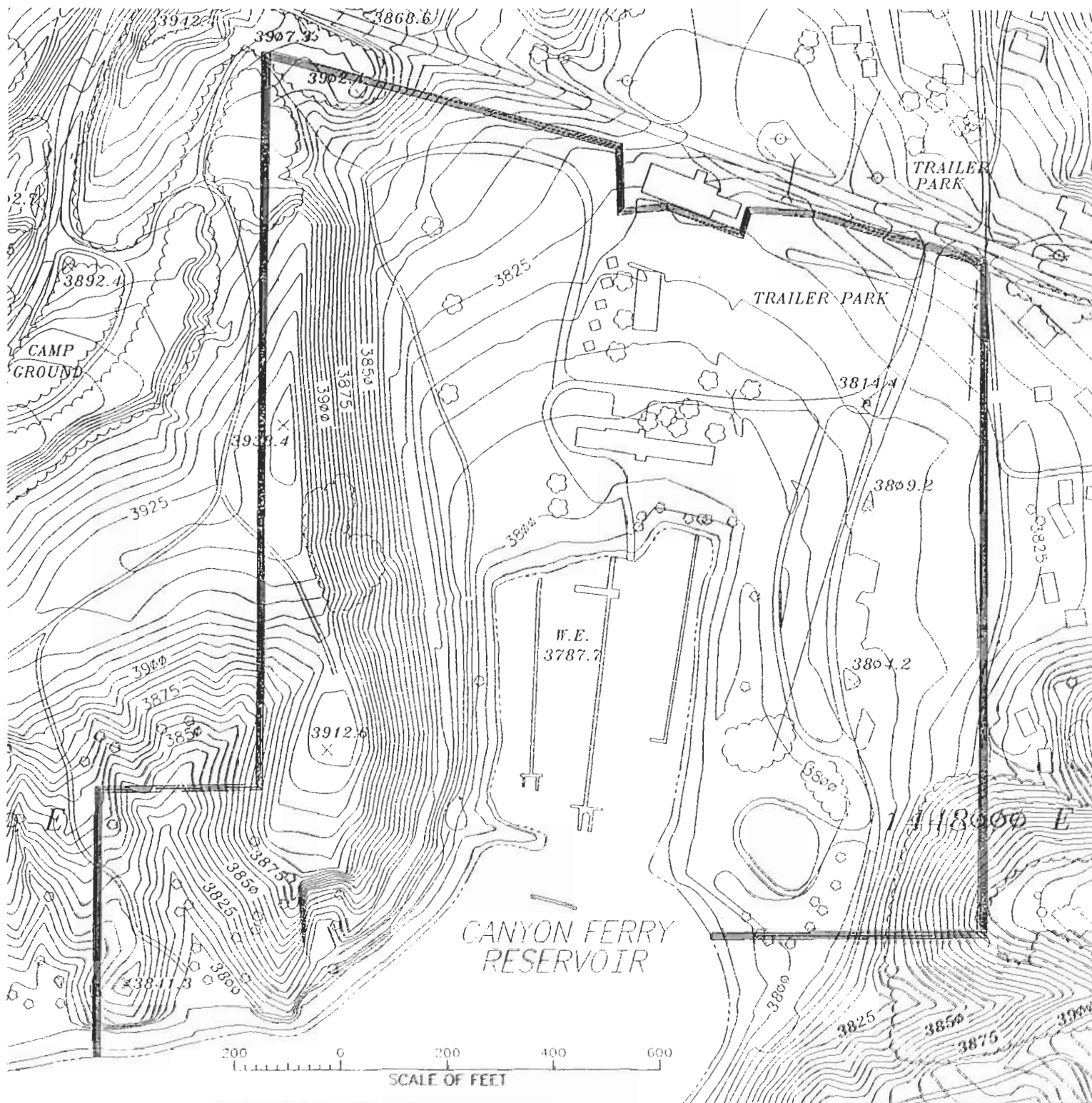


EXHIBIT A

 *Kim's Marina Concession Area Boundary*

April 27, 1998

United States, Bureau of Reclamation

Request for Transfer/Assignment of Concession Lease/Contract

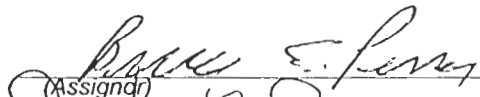
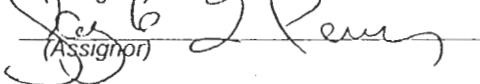
1) Fill out the top portion of this form completely. 2) Submit the completed, notarized form to the Bureau of Reclamation, at P.O. Box 30137 Billings, MT 59107, Attention MT-223. An approved copy will be returned to the Assignee.

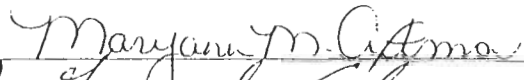

Concession Contract Number: 4-LM-60-L2416 (Kim's Marina)

Seller/Assignor (as shown on the contract)	Buyer/Assignee (as will be shown on the contract)
Name: Bruce E. Perry	Name: Gregory S. Axtman
Name: Gayle L. Perry	Name: Maryann M. Axtman
Address: c/o A. Rogers Little P.O. Box 1166	Address: 8227 Canyon Ferry Road
City: Helena	City: Helena
State: Montana	State: Montana
ZIP: 59624	ZIP: 59602

Bruce E. Perry & Gayle L. Perry, do hereby assign, transfer and set over unto Gregory S. & Maryann M. Axtman, (Assignor) (Assignee)

all of their rights and interests in the Concession Contract for Kim's Marina, at Canyon Ferry Reservoir, contract number 4-LM-60-L2416, dated December 20, 1993, for the remainder of the term of the said contract, subject to the covenants, conditions and fees contained in the contract, including Modification Number 2, dated March 17, 1998, attached.


(Assignor)

(Assignor)


(Assignee)

(Assignee)

ACKNOWLEDGEMENT

STATE
COUNTY

Gregory S. Axtman and Maryann M. Axtman, as Assignees and

On this 7th day of April, 1998, before me personally appeared Bruce E. Perry and Gayle L. Perry, assignor(s), known to me to be the identical person(s) described in and whose name is affixed to the foregoing assignment and acknowledged the execution thereof to be his voluntary assignment.

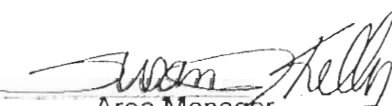
WITNESS my hand and notarial seal the day and the year last above written.


Notary Public

SEAL

My Commission Expires: 1/15/2002

This transfer is subject to the approval of the Area Manager, Montana Area Office, Bureau of Reclamation (Reclamation).

Approved By: 
Area Manager
Montana Area Office
P.O. Box 30137
Billings, MT 59107

Date: 4-24-98

Agreement and Permit Between Bureau of Reclamation
and
Bruce and Gayle Perry
for
Operation of Kim's Marina, Canyon Ferry Reservoir
* * * * *
Modification No. 1
October 20, 1994

ACM 400		
OFFICIAL FILE COPY		
CF		
OCT 28 '94		
NO REPLY NECESSARY		
INITIAL		
REPLY OR OTHER ACTION TAKEN		
CODE NO.		
INFO. COPY TO:		
ROUTE TO	INITIALS	GA

The above titled Agreement is hereby amended:

1. To label this Agreement and permit as, "*Contract No. 4-LM-60-L2416*". This unique contract number is assigned to this Agreement and used by Reclamation to track and record correspondence, payments, and other activities associated with this Agreement. Assigning this contract number does not change or alter any of the terms or conditions of the Agreement.
2. All reference in the Agreement to the Montana Department of Fish, Wildlife, and Parks, or "*Department*," is hereby changed to the United States Bureau of Reclamation, or "*Reclamation*." This change of name reflects that the Department has terminated its recreation management agreement for Canyon Ferry and that Reclamation is now the sole administrator of this Agreement. The change of name does not otherwise change or alter any of the terms or conditions of the Agreement.
3. Article 3, "Concession Fee," is hereby amended by inserting the following paragraph after the last paragraph.

"Reclamation reserves the right to waive all or a portion of the annual lease fee, except the \$1,000 minimum fee, as compensation to the Concessioner for Concessioner-constructed improvements to Reclamation property, provided: that such improvements were constructed in compliance with the provisions of this contract; were constructed in the previous season of operation; and that the portion of the annual fee waived shall not exceed 50 percent of the Concessioner's cost of constructing the improvements."

I agree to the above modifications of this Agreement.

Bruce E. Perry 10/21/94
Bruce E. Perry (Date)
Concessioner

Katherine Jabs 11-4-94
Katherine Jabs (Date)
Area Manager
Bureau of Reclamation

Gayle L. Perry 10/21/94
Gayle L. Perry (Date)
Concessioner

AGREEMENT AND PERMIT

THIS AGREEMENT, made this ____ day of 93, 1993, between the STATE OF MONTANA, acting by and through its DEPARTMENT OF FISH, WILDLIFE AND PARKS of Helena, Montana (Department) and Bruce E. Perry and Gayle L. Perry, husband and wife, of Helena, Montana (Concessionaire).

RECITALS:

WHEREAS, the Department has administrative control over certain areas of Canyon Ferry Reservoir in Lewis and Clark County, Montana, under lease from United States Department of the Interior, Bureau of Reclamation, via contract no. 14-06-600-2186, dated February 21, 1957 and

WHEREAS, the Department wishes to provide the recreating public at Canyon Ferry, certain commercial services, and

WHEREAS, the Concessionaire wishes to provide those services through the operation and maintenance of a concession site,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Description of Premises. The Department grants to the Concessionaire and the Concessionaire accepts from the Department permission to use and occupy the following described tract of land for the purposes herein described and for no other purposes:

Two tracts of land located Sections 2 and 3, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana, and more particularly described as follows:

Tract 1

Beginning at the $\frac{1}{4}$ corner of Section 2 and Section 3 (SW corner, NW $\frac{1}{4}$, Section 2), T10N, R1W, thence S0° - 51' for a distance of 1054.7 feet to a point; thence S88° - 54'W for a distance of 300.3 feet to a point; thence S0° - 51'W for a distance of 400 feet, more or less, to the north shore of Canyon Ferry Lake; thence along the north and east shore of Canyon Ferry Lake and along Cave Bay so-called to a point; thence N16° - 32'E for a distance of 980 feet, more or less, to a point; thence N14° - 44' along the southerly right-of-way of Canyon Ferry Road, so-called, for a distance of 220 feet, more or less, to a point; thence S89° - 32'W for a distance of 110 feet, more or less, to a point; thence S18° - 06'W for a distance of 45.91 feet to a point, thence N71° - 57' for a distance of 137.04 feet to a point, thence S89° - 32'W for a distance of 95 feet, more or less, to a point; thence N0° - 42'E for a distance of 114.25 feet to a point; thence N74° -

44'W along the southerly right-of-way of Canyon Ferry Road, so-called, for a distance of 686.37 feet to a point, thence S0° - 41'W for a distance of 300.44 feet to the point of beginning.

Said tract 1 contains 28 acres, more or less.

Also Tract 2

Beginning at a point which lies S0° - 47'W a distance of 105 feet, more or less from the NE corner NW $\frac{1}{4}$, SW $\frac{1}{4}$, S2, T10N, R1W; to the true point of beginning; thence S0° - 47'W for a distance of 1,250 feet, more or less, to a point; thence S89° - 37'W for a distance of 300 feet, more or less, to a point on the east shore of Canyon Ferry Lake; thence in a generally northern direction along the shore of Canyon Ferry Lake and along Cave Bay, so-called, to a point; thence N16° - 32'E for a distance of 980 feet, more or less, to a point, thence S14° - 44"E along the southerly right-of-way of the Canyon Ferry Road so-called for a distance of 110 feet, more or less, to the point of beginning.

Said tract 2 contains 9 acres, more or less.

The above described property is shown on the attached plat which is entitled "Concession Permit Area, Kim's Marina, Canyon Ferry Lake, Montana, dated March 28, 1983", marked as Exhibit "A," attached hereto and incorporated in and made a part of this Agreement.

The Concessionaire's activities will be restricted to those areas herein described and marked on Exhibit A.

2. Term. This Agreement has a term from January 1, 1994, until October 1, 2003, unless otherwise terminated as provided by this Agreement and Permit, or if the area is required for project purposes of the Canyon Ferry Unit, Helena-Great Falls Division, Pick-Sloan Missouri Basin Program by the Bureau of Reclamation.

At least 180 days prior to the expiration of the term of this Agreement, the Department will notify the Concessionaire of the Department's intentions concerning the use of the concession premises following the term of this Agreement.

3. Concession Fee. The Concessionaire shall pay to the Department a cash fee equal to two percent (2%) of gross receipts of all gasoline sales, sale of groceries and other merchandise and services, rental of cabins, campground fees, rentals of docks or equipment and other transactions provided for by this Agreement and conducted upon the premises herein described; provided, however, that there shall be a minimum yearly fee of \$1,000.00. The payment schedule is as follows:

\$1,000.00 minimum fee to be paid on or before January 15 of each and every year. This payment is to be made in advance for the following year. Balance of fee, if any, to be paid on or before April 20th of each and every year and which will be the final payment of the fee for the preceding calendar year (January 1 through December 31). If the prepayment or the annual balance payment are received late by the department the following years minimum fee and prepayment shall be \$1500.

4. Allowable Activities. The Concessionaire is hereby granted permission and license to establish, operate, and maintain a business and the necessary buildings and equipment in and upon the above described land in accordance with the following purposes and no other:

To provide services for the public, including the sale of groceries, ice, rental of docks, sale of fishing and sporting equipment and supplies, the rental of cabins and campground space, the rental of boats, the rental of sporting equipment, including skis, surfboards or any other paraphernalia or gasoline, greases, oils, and the sale of supplies, tools, equipment, and parts needed for all of the above described equipment, the conduct of recreational activities such as the right to launch boats, and to conduct a business which is generally recognized for recreational purposes, the right to sell beverages, including beer and wine, as well as candies, food, ice cream, and other sundry items which are generally desired by the public in recreation areas.

These activities shall be conducted in accordance with the provisions of this Agreement and with the Master Site Plan. The Concessionaire may not use the premises for any other purpose without obtaining prior written consent of the Department and the Bureau of Reclamation.

5. Required Activities. The Concessionaire must provide the following minimum services:

Rental of boats and motors;
Sale of gasoline, oil and boating supplies;
Boat launching facilities;
Boat docking facilities, a reasonable portion of which will remain available to the itinerant boating public;
Facilities for pumping of on-board sewage holding tanks and for disposal of contents of "portable" units at such time as it is determined by the Department that such facilities are necessary and environmentally and economically feasible;
Offer for sale State Park Passports;
Operation of camping facilities located on concession premises;

Operation of campers' supply store for sale of firewood, food and beverages, fishing tackle and equipment, and various sundries.

6. Additional Goods and Services. During the term of this Permit, the Department shall not grant a permit or license on or within the premises described in this Permit to any other private person which would allow that person to offer goods and services offered by the Concessionaire. In the event the Department deems desirable the offering of additional goods and services on or within the premises described in this Permit, the Concessionaire shall have the first right to offer such goods and services on the terms and conditions, including concession fees, that the Department deems acceptable. If the Concessionaire does not wish to offer such additional goods and services; the Department may grant a permit or license on or within the premises described in this Permit to any other private person which would allow that person to offer such additional goods and services. This section shall not be interpreted as being an exclusive license to the Concessionaire to offer any goods or services at Canyon Ferry State Park except within the area described in this Lease and Permit. The Department, however, shall not knowingly allow competition that may be detrimental to the Concessionaire in the immediate vicinity of the permit area. "Immediate vicinity" includes the area from Riverside Campground, but not including Canyon Ferry Village south easterly to and including Hellgate Campground.

The Department reserves the right to permit recreation area visitors to bring and use all equipment, food or other property for their own personal use and consumption to any location on the recreation area including the premises described in this Lease and Permit provided, however, they are not otherwise disallowed by the Department or by state or federal law.

7. Quality of Service. All items sold by the Concessionaire shall be of first-class high quality and all services provided by the Concessionaire shall be rendered courteously and efficiently. The Department reserves the right to prohibit the sale of any item that it deems objectionable or inappropriate to the area. The Department also reserves the right to order the improvement of the quality of either merchandise or service rendered. The Concessionaire must employ a sufficient number of qualified employees to properly operate the concession facilities.

8. Posting of Rates and Charges. The Concessionaire must conspicuously post the prices for all goods and services and must provide to the Department for approval no later than March 31st of each year for that calendar year, a written copy of items for sale or rent, and such rates and charges.

9. Nondiscrimination. The Concessionaire may not discriminate against any person because of race, color, religious

creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry by refusing to furnish any service or privilege offered to or enjoyed by the general public. The Concessionaire may not publicize the services provided hereunder in any manner that would directly or inferentially reflect upon the acceptability of the patronage of any person because of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry. The Concessionaire must use hiring practices which are in compliance with all existing federal and state laws.

10. Hours of Operation. The Concessionaire must operate the business permitted by this Agreement at sufficient hours and times to serve the public wishing to avail themselves of the Concessionaire's services. The Concessionaire's services will be available to the public at least from 8 a.m. to sunset from April 15 until September 15 of each year, provided that a representative of the Concessionaire is personally available on the premises within 10 minutes of being contacted during such hours of operation. The Concessionaire shall provide a free telephone or other communication device on the premises to aid the public in contacting the Concessionaire. The Department may establish and require specific hours of operation.

11. Force Majeure. Any prevention, delay or stoppage due to strikes, walkouts, labor disputes, acts of God, inability to obtain labor, materials, or reasonable substitutes, governmental restrictions, controls or regulations, enemy or hostile governmental action, civil commotion, fire or any other causes determined by the Department (in the exercise of fair discretion) to be beyond the reasonable control of the Concessionaire will not be deemed to be a breach of this Agreement. The Concessionaire will have a reasonable time after cessation of any of the above mentioned causes to render performance.

12. Competition. The Department reserves the right to permit recreation area visitors to bring and use all equipment, food or other property for their own personal use and consumption to any location on the recreation area including the premises described in this Agreement. The Department further reserves the right to impose recreation fees on park users.

It is further agreed that the Concessionaire will extend the same courtesy to the general public as to the visitors of this concession, and that all persons will be permitted to enter the premises and public portions of the buildings freely and to enjoy the conveniences and privileges accorded to the patrons of the concession governed by this Agreement.

13. Assignment and Hypothecation Prohibited. The Concessionaire may not assign this Permit or any right, privilege or license conferred by this Permit except upon prior written

approval of the Department. The Concessionaire may not lease, subcontract or encumber any portion of the concession premises without first obtaining the written consent of the Department. Violation of this provision automatically terminates this agreement and permit. The Permit may be assigned or otherwise transferred to the heirs of the Concessionaire upon Concessionaire's death, but only if the Department first determines that the operations permitted by this Agreement will be managed in a responsible manner.

14. Repair and Maintenance. The Concessionaire must maintain the premises and any improvements in good order and repair at his own expense during the entire term of this Agreement and Permit. If the Concessionaire neglects or refuses to do so, the Department has the right to:

- (a) perform such maintenance or repairs for the account of the Concessionaire and the Concessionaire must promptly reimburse the Department for the cost thereof, provided that the Department shall first give the Concessionaire sixty (60) days written notice of its intent to perform such maintenance or repairs for the account of the Concessionaire to enable the Concessionaire to perform such maintenance and repairs at his own expense, or
- (b) terminate this Agreement and Permit in accordance with provisions of Section 35, "Termination by the Department". If the repairs or maintenance are to correct a public safety problem or hazardous condition, the Department may demand repairs be made immediately.

15. Approval for Alterations Required. No alterations or additions to the site or facilities thereon including land manipulations, facilities construction and painting may be made on or to the subject premises or facilities by the Concessionaire without first obtaining written consent of the Department. Unless the Department agrees to share the cost of alterations or additions, permitted alterations and additions shall be made at the sole expense of the Concessionaire. Written approval from the Department must be received prior to the commencing of any work. All work must be completed on a schedule established at the time of approval.

16. Boat Docks. Docks shall be maintained in a usable condition in a manner acceptable to the Department. Replacement docks which are installed or docks which are to be upgraded to the new standard, must have a design, floatation, structural, decking and anchor designs and materials which are approved by the Department. Floatation in these facilities will not consist of empty metal barrels, or other sinkable units. Docks shall be constructed and maintained to the standard delineated in Exhibit C.

17. Department Dock Space. The Concessionaire shall provide to the Department at no charge dock space for one department boat.

18. Expansion of Dock Facilities. The Concessionaire may upon approval by the Department increase the number of boat docks under the following conditions:

- (a) The replacement and upgrading of existing dock facilities proceeds on schedule.
- (b) The expansion of associated shoreline support facilities including, but not limited to parking area expansion, are provided concurrent with or prior to the expansion of the dock facilities.
- (c) The Concessionaire is in compliance with all conditions of this Agreement and Permit and is implementing the other priorities expressed herein or in the Master Site Plan.

19. Signs. The Concessionaire may not erect any sign on the premises or any sign advertising the premises except those signs furnished or approved by the Department. All necessary alterations to signs shall be approved by the Department. Existing signs which are not in conformance with the standards must be removed and replaced by the Concessionaire on a schedule approved by the Department. All signs erected after January 1, 1991, shall make reference to "Canyon Ferry State Park."

20. Planted Areas. Planted areas which are required to implement the Master Site Plan, or to reclaim disturbed areas, or which are desired by the Concessionaire, shall be installed and maintained by the Concessionaire in accordance with specifications prepared by the Department, and in accordance with the Master Site Plan.

21. Utility Lines. All future utility lines and relocated or rebuilt existing utility lines must be installed underground in accordance with the applicable standards for underground utility installation. The Department, however, may agree to permit overhead lines provided that reasonable alternatives such as relocations or undergrounding are not available.

22. Sanitary Facilities. All sanitary facilities including latrines or sewage disposal facilities must be constructed and operated by the Concessionaire in accordance with all applicable regulations of the Department, the State Department of Health and Environmental Sciences and Lewis and Clark County Health Department.

23. Trash Removal. The Concessionaire must promptly remove to the nearest Montana Department of Health and Environmental

Sciences approved disposal area, all rubbish, waste and garbage (wet or dry) which is generated by the Concessionaire's activities or public use of the concession area. No wastes of any kind except sewage via an approved disposal system will be disposed of on the concession area or in public recreation areas.

24. Fire Hazards. The Concessionaire must not create or suffer to exist any fire hazard. The Concessionaire must take all reasonable precautions to prevent and suppress grass and forest fires.

25. Destruction of Facilities. If any part or all of the concession facilities or structures is partly or totally destroyed by fire or the elements during the term of this Agreement and Permit or so damaged as to make repair or restoration thereof impractical and therefore defeat the purposes of the Agreement and Permit, this Agreement and Permit shall terminate at the option of either party and all of the rights and obligations of the Concessionaire hereunder shall cease except for the obligation for the rental fee due. If the facilities or structures are not to be restored or rebuilt, the Concessionaire must remove all debris from the land on which the facilities or structures were formerly located and restore the land to a condition similar to its original appearance insofar as it is practical to do so. Such restoration shall be completed within ninety (90) days from the date when the damage occurred including any time work was prevented by causes beyond the Concessionaire's control. If the structures or facilities so damaged by the elements are to be rebuilt, restored or repaired so as not to require the termination of this Agreement and Permit, then the Concessionaire agrees to restore or rebuild the same at his sole expense in accordance with plans and specifications which are approved by the Department. The restoration must be accomplished within one hundred (100) days from the date when the damage occurred plus any time work was prevented by causes beyond the Concessionaire's control. If the restoration cannot reasonably be completed within such time, the Concessionaire shall have such additional time as may be reasonably required to complete the restoration.

26. Utilities and Services. The Concessionaire must pay before delinquency all charges for utility services, supply services, material or other similar charges which arise or grow out of the operations or maintenance of the premises.

27. Taxes and Fees. The Concessionaire must pay promptly before the penalty date all taxes and fees of any nature which are levied by federal or state governments or any subdivision or agency of either.

28. Insurance Coverage. The Concessionaire shall at all times maintain and pay for liability insurance in amounts as reasonably determined by the Department, consistent with the

amounts required of other concessionaires with similar operations. True copies of all such policies shall be forwarded to the Department by March 31 of each year.

29. Indemnification. The Concessionaire agrees to indemnify and save harmless the Department from all claims from injuries or damages arising or growing out of the operations of the concession or its premises, except for acts caused solely by the negligence of the Department or its employees.

30. Compliance with Laws. The Concessionaire must comply with applicable federal, state, and local laws or ordinances governing the operation of the premises. Violation of such laws or ordinances may be considered as cause for termination of this Agreement and Permit.

31. Accounting and Records. The Concessionaire must keep full and true accounts of all receipts and disbursements in a book or set of books adopted for that purpose by the Concessionaire, and approved by the Department. The bookkeeping and accounting shall be of a type and nature the Department may direct or using standard and customary accounting procedures. The agents or representatives of the Department will have the right to examine books at any reasonable time. The Concessionaire must submit to the Department an annual financial report no later than April 20 of each year for the preceding calendar year.

32. Right of Access. The Concessionaire recognizes the right of ingress and egress to authorized employees and agents of the United States Bureau of Reclamation, the State of Montana, and other governmental agencies for the purpose of engaging in any activities deemed necessary for the construction, operation, and maintenance of the Canyon Ferry Reservoir, Canyon Ferry State Recreation Area, the concession and all works and facilities appurtenant thereto or for any other purpose authorized or required by law. Such persons will endeavor to give the Concessionaire advance notice of the intent to exercise this right of access whenever reasonably possible.

The Concessionaire further agrees that the Department or its designee may at all reasonable times and during reasonable hours have full access to the concession premises and through the facilities or structures located thereon for the purpose of examining and inspecting the condition thereof or of exercising any of the rights or powers reserved to the State and the United States under the terms, conditions, and provisions of the Agreement.

33. Bureau of Reclamation. The Concessionaire understands and agrees that this Agreement and Permit is subject to all rules, regulations, and restrictions of the Bureau of Reclamation.

Further, the Concessionaire understands and agrees that in the event of termination of the Memorandum of Understanding between the United States and the Department, contract no. 14-06-600-2186, dated February 21, 1957, the United States shall be deemed to stand in the stead of the Department as grantor for the remainder of the term of this Agreement; provided, however, in the event of such termination the United States at any time within ninety (90) days thereafter may terminate this Agreement by giving to the Concessionaire thirty (30) days written notice thereof, and in such event, the Concessionaire shall have the privilege of selling or removing for a period of thirty (30) days after termination of this Agreement or such longer period as may be determined by the Bureau of Reclamation to be reasonable, improvements which have been constructed on the premises at the sole cost or expense of the Concessionaire; otherwise after the expiration of said period of time the title to such improvements shall vest in the United States.

34. Ditches and Canals. There is reserved from the Agreement and Permit the right-of-way for all ditches and canals as may later prove necessary and desirable and there is reserved all private rights, if any, which have attached prior to the date of this Agreement.

35. Water Use. All water shall be obtained directly from Canyon Ferry Reservoir or reservoir storage. Permission is granted to the Concessionaire to pump storage water from the reservoir for domestic purposes only. Such use is by permission only and grants no water rights to the user. It is understood by the Concessionaire that the grant of permission to pump storage water from Canyon Ferry Reservoir does not preclude the Bureau of Reclamation from requiring the Concessionaire to enter into an appropriate water service contract if it is determined to be a requirement of such water use. The United States does not warrant the quality of the water for domestic use and assumes no liability for water used for such purposes and is under no obligation to construct or furnish water treatment facilities. Ground water developed by the Concessionaire for domestic purposes shall be developed in the name of the United States, Department of Interior, Bureau of Reclamation. Ground water may not be developed for other than domestic purposes. Plans for water facilities must be approved in writing by the Department and the Bureau of Reclamation prior to any such development.

36. Termination by the Department. If in the judgment of the Department, the manner of the operation of the premises or services does not meet the requirements of this Agreement and Permit, or if the Concessionaire is in default of any term of this Agreement, the Department shall give the Concessionaire written notice specifying the particulars of the unsatisfactory performance or default. If the Concessionaire fails or refuses to remedy such unsatisfactory performance or default within thirty (30) days of receipt by the

Concessionaire of such notice, the Department may terminate this Agreement and Permit. The decision of the Department on any such matters shall be final.

37. Removal of Improvements. The Concessionaire shall be permitted for a period of ninety (90) days after expiration or termination of this Agreement and Permit to remove any improvements or other property thereon and restore the premises to a condition satisfactory to the Department and to the Bureau of Reclamation. Except as noted in Article 33 hereof, removal of the Concessionaire's improvements or other property and restoration of the premises within the ninety-day period are the responsibility of the Concessionaire. All improvements or other property not removed within the ninety-day period will be considered abandoned and will automatically become property of the United States and subject to disposal under federal regulations. Any removal of improvements or other property and restoration work remaining will be performed by the State of Montana or the United States and the Concessionaire will be liable for all costs therefor.

38. Weeds and Plants. The Concessionaire must use the land in such a manner as to reasonably control the growth and spreading of noxious weeds and promote acceptable conservation of the land. The Concessionaire must obtain the consent of the Department for the establishment of any plant species proposed on the premises. The Concessionaire shall further cooperate in weed control programs in compliance with Public Law 90-583, as amended, which authorizes representatives of public bodies to enter federal land to control noxious weeds under certain specified conditions.

39. Pesticides. Use of pesticides on land covered by this Agreement and Permit must comply with all provisions of federal and state pesticide laws, and with the Department of Interior's policies. The Concessionaire may not use chemicals listed on the Department of Interior's current prohibited list; chemical toxicants for the killing of predator mammals or birds; and chemical toxicants which cause secondary poisoning for killing mammals, birds, and reptiles. The Concessionaire must secure written approval from the Department prior to using any pesticides on the premises.

40. Pollution. The Concessionaire agrees to comply fully with all applicable federal laws, orders and regulations and the laws of the State of Montana concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants and concerning the air with respect to radioactive materials or other pollutants. The Concessionaire further agrees to obtain all required permits or licenses from appropriate federal, state, or local authorities.

41. Modification. This writing and the attached exhibits contain the complete agreement of the parties hereto and no modification hereof shall be binding on either party unless signed by the party to be bound subsequent to the date of this Agreement.

42. Notices. All notices to be made under this Agreement shall be effectively made if delivered to either party in person or if mailed by certified mail as follows:

To the Department:

Parks Division
Administrator
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

To the Concessionaire:

Bruce Perry
Gayle Perry
Kim's Marina and Resort
8015 Canyon Ferry Road
Helena, MT 59601

Either party may change its address on notice to the other in writing.

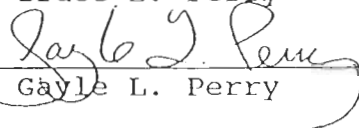
IN WITNESS WHEREOF, the Director of the Montana Department of Fish, Wildlife and Parks by the authority in him vested has hereunto subscribed his name on behalf of the State of Montana and through the Department of Fish, Wildlife and Parks, and Bruce E. Perry and Gayle L. Perry, Concessionaire, have hereunto set their hands the day and year first mentioned above.

STATE OF MONTANA
DEPARTMENT OF FISH, WILDLIFE & PARKS

BY: 
Director

KIM'S MARINA

BY: 
Bruce E. Perry

BY: 
Gayle L. Perry

STATE OF MONTANA)
)
County of Lewis and Clark)

On this 20 day of December, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Patrick J. Graham, Director, Montana Department of Fish, Wildlife and Parks, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that

he as such Director and by the authority of said Department executed the same on behalf of said Department.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Dean H. Sewell
Notary Public for the State of Montana
residing at Helena
My commission expires: 4-94.

STATE OF MONTANA)
)
County of Lewis and Clark)

On this 24TH day of November, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Bruce E. Perry, and Gayle L. Perry known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

AS PERRY
Notary Public for the State of Montana
residing at Helena, MT.
My commission expires: 1/15/94.